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MEMORANDUM FOR [redacted]

SUBJECT: Missing Persons Act (DOD 64-125)

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1. In compliance with the request of [redacted] at a meeting in his office on 29 September 1955, representatives of the Department of the Army have gathered the information set out below in connection with the revision of the Missing Persons Act. (Information re other agencies of the Executive Branch was informally furnished representatives of the Department of the Army by Veterans' Administration, Mr. Pickett, Code 139, Ext. 3077; Department of Health, Education and Welfare, Mr. Calvin, Code 176, Ext. 2010; and Department of Labor, Miss Howell, Code 177, Ext. 1261.)

a. Extraneous payments made by Veterans' Administration, the Department of Health, Education and Welfare and the Department of Labor based on determination of death authorized under the Missing Persons Act will be collected wherever possible if the principal subsequently is found to be alive. The departments may waive such collections if the circumstances warrant, but such action is considered to be an exception. The Civil Service Commission (Mr. Homer Tatus, Code 171, Ext. 3013 or 4780) has advised that this rule is generally applicable to Civil Service retirement payments and payments on Government sponsored insurance policies. In instances where recovery cannot be effected, equivalent deductions are made from any payment to which an individual or his dependents may in the future become eligible so that dual payments are not made. Insofar as the six month gratuity, arrears of pay and other service payments are concerned, it is considered that the opinion of the Comptroller General D-120003 (4 Comp. Gen. 194), dated 1 April 1955, held that the government cannot recover such payments. However, it is believed that the opinion indicates that the principal could not again receive arrears of pay and other payments that would be due him had not the amounts been paid to his supposed survivors.

b. Whether payments of benefits may be made to dependent children (or to a person acting in their behalf) when the dependent wife of a principal is also in a missing status depends in each case on the statutory authority for

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the particular benefit involved, the regulations promulgated thereunder, and the interpretation thereto by the agency charged with the administration of the benefit.

(1) Compensation payable by the Veterans' Administration under the provisions of Veterans' Legislation No. 1(a), Part II, paragraph III (36 U.S.C. 124). Depending on the circumstances, the Veterans' Administration may pay compensation where there has been no judicial finding of death and the wife's whereabouts are unknown. Payments for minor children are generally made to the legal guardian, but where the circumstances justify such action, they may be made to the responsible person or persons having custody of the children.

(2) National Service Life Insurance benefits and Servicemen's Indemnity benefits payable by the Veterans' Administration under the provisions of the National Service Life Insurance Act of 1940 (54 Stat. 1066), as amended (36 U.S.C. 601 et seq), and the Servicemen's Indemnity Act of 1951 (65 Stat. 39; 36 U.S.C. 851 et seq). If the wife was the designated beneficiary or no beneficiary was designated, the Veterans' Administration will pay the insurance or indemnity to the contingent beneficiary or beneficiaries only if there is evidence clearly indicating that the wife is dead. In doubtful cases, the Veterans' Administration will not make payment, but will leave the claimants to their remedy in the courts.

(3) Benefits payable by the Department of Labor under the provisions of section 10 of the Federal Employees' Compensation Act (39 Stat. 744), as amended (5 U.S.C. 760). The Department of Labor will pay, to the legal guardian or to a responsible person having custody of the children, the "children's share" of the compensation which would be authorized if the wife were still living. If the wife is later judicially declared dead, the "children's share" authorized where there is no widow will be paid, retroactive to the judicially determined date of death of the wife.

(4) Benefits payable by the Department of Health, Education and Welfare, under the provisions of section 202 of the Social Security Act (49 Stat. 623), as amended (42 U.S.C. 402). The "children's insurance benefits", which accrue regardless of whether the widow is living, would be payable to the legal guardian or responsible person having custody. The "widow's insurance benefits" would not be paid.

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 Lt. Colonel, O2
 Legislative Division, GACIL
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